

REMARKS

Claims 1-8 are pending. No new matter has been added by way the present amendments. For instance, claims 2 and 3 have simply been amended to correct issues of antecedent basis. Additionally, claims 7 and 8 had been amended to eliminate the recitation of “as set forth in claim 1”. Additionally, claim 9 has been cancelled. These amendments are non-narrowing in nature.

In view of the following remarks Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Information Disclosure Statement

The Examiner has asserted that the Information Disclosure Statement filed on December 8, 2004 failed to comply with 37 C.F.R. 1.98(a)(2), which requires a legible copy of each cited patent document. Applicant submit that the Examiner is incorrect in the present instance.

The present application is the U.S. National Phase of PCT/EP03/06886. Moreover, two of the three references referred to by the Examiner (EP 0545099-A and DE 19840322) were not supplied with the Information Disclosure Statement since they were cited in the International Search Report corresponding to PCT/EP03/06886. As such, it is the responsibility of the International Bureau to provide copies of these references. Additionally, the third reference referred to by the Examiner, JP 2001/302605-A was provided with the Information Disclosure Statement.

However, to expedite this issue a replacement copy of JP 2001/302605, along with its corresponding English Abstract are provided for the Examiner’s information. Additionally,

copies of DE 19840322-A1 (which corresponds to USP 3,000,780, already provided,) and EP 0545099 (which corresponds to application 07/973,976 (USP 5,330,995)), need not be provided since the corresponding U.S. counterparts have already been provided.

Accordingly, the Examiner is respectfully requested to return an initialed copy of the form listing these references indicating that they have been properly considered.

Issues under 35 U.S.C. 101

The Examiner has rejected claim 9 under 35 U.S.C. 101 asserting that the claimed recitation of a use, without setting forth any steps involved in the process, is improper pursuant to 35 U.S.C. 101. Applicants traverse and submit that claim 9 has been cancelled. Thus, this rejection is moot. Reconsideration and withdrawal thereof are respectfully requested.

Issues under 35 U.S.C. 112, 2nd paragraph

The Examiner has rejected claims 3 and 7-8 under 35 U.S.C. 112, 2nd paragraph for the reasons recited at page 3 of the outstanding Office Action. Applicants respectfully traverse.

The Examiner has asserted that in claim 3, the recitation of "as biphenylamide II" is confusing and suggests that it be deleted. Applicants submit that the deletion of "as biphenylamide II" would not be suitable. Rather, Applicants have amended claim 3 in order to indicate that the biphenylamide II specifically refers to the biphenylamide of Formula II required by B) of claim 1. Similar amendments have also been made to claim 2. Accordingly, this rejection is moot. Reconsideration and withdrawal thereof is respectfully requested.

The Examiner has also asserted that claims 7 and 8 are improperly dependent upon two claims, claims 1 and 6. Applicants traverse and submit that the dependency upon claim 1 is

redundant, since claim 6 is already dependent upon claim 1. Thus, claim 7 and 8 have been amended to avoid this issue. Reconsideration and withdrawal of this rejection are therefore respectfully requested.

Allowable Subject Matter


In view of the above, Applicants respectfully submit that the currently pending claims are in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw all rejections and the allow the currently pending claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie (Reg. No. 42,874) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: December 13, 2005

Respectfully submitted,

By  42-874
Scott L. Lowe
Registration No.: 41,458
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

Attachment: replacement copy of JP 2001/302605 with English Abstract